Supreme Court, U.S.
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In The Supreme Court of the United States

MEMBERS OF THE PEANUT QUOTA HOLDERS ASSOCIATION, INC., AUGUSTUS GARRETT, JEROME PAULK, FAYE PAULK, and D.U. PULLUM,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

PETITION FOR WRIT OF CERTIORARI WITH APPENDIX

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QUESTIONS PRESENTED

(1) Whether a compensable taking occurs when the United States transforms a lease agreement, arrived at by arms-length bargaining between private parties and without government intrusion, into a forced sale of the leased property without compensation to the lessor for the property interest lost in the forced sale.

(2) Whether a compensable taking occurs when the United States takes the property interest in a statutory subsidy from its holder and transfers that property interest to a former lessee contrary to statutory assurances that a lease would not adversely affect the property holder's interest.

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OPINIONS BELOW

The opinion of the United States Court of Federal Claims is reported at *Members of the Peanut Quota Holders Ass'n v. United States*, 60 Fed. Cl. 524 (2004). The opinion of the Court of Appeals for the Federal Circuit is reported at *Members of the Peanut Quota Holders Ass'n v. United States*, 421 F.3d 1323 (Fed. Cir. 2005). The order denying rehearing en banc is reported at 2005 U.S. App. LEXIS 29260 (Fed. Cir. 2005).

JURISDICTION

The final judgment of the United States Court of Appeals for the Federal Circuit was entered on December 23, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the Constitution of the United States provides, in relevant part: "Nor shall private property be taken for public use, without just compensation."

STATEMENT OF THE CASE

The Facts

Petitioners Augustus Garrett, Jerome Paulk, Faye Paulk, and D.U. Pullum (the "Members") are individual members of the Peanut Quota Holders Association, Inc. The Members owned peanut farms. Pursuant to various statutes, the United States

Department of Agriculture ("USDA") had allocated acreage and then poundage allotments for peanuts ("peanut quotas") to those farms. The Members had, in turn, lawfully negotiated leases for their quotas to non-Member farmers. The Members had periodically leased their quotas since at least 1998, in reliance on express statutory assurances that such leases would not disadvantage the Members or others similarly situated. (Public policy encouraged periodic leasing for growing efficiency and crop rotation purposes.)

The effect of USDA's peanut quotas was to create an artificial minimum price for a quota holder's expected peanut crop. The Members and other quota holders were entitled to "borrow" money from the USDA in advance of the quota holders' sale of mature peanut crops, at a loan rate set at a price per bushel of peanuts. If, upon maturation of the crop, the quota holder was able to sell his crop at a higher price per bushel, the quota holder was required to repay the loan in full. If the quota holder sold the peanut crop for less than the total loan, the USDA did not require the quota holder to repay the loan in full, but instead forgave the unpaid portion of the loan. The purpose and effect of the quota system is to assure holders of quotas a minimum price for the peanuts covered by the quota regardless of market factors.

Over the last six decades, Congress has regulated overall peanut production largely through quotas set by the USDA. Although the peanut quotas originated in the Agricultural Adjustment Act of 1938 ("AAA"), as amended, ch. 39, tit. III, §§ 357-359, 55 Stat. 88, 88-91 (referred to in the panel opinion as the

"1941 Act"), Congress often has changed the formula used to determine quotas.

In 1949, Congress, pursuant to the Agricultural Act of 1949, ch. 792, tit. I, § 101, 63 Stat. 1051-52, amended the AAA, instituting a price support program for various crops, including peanuts, as well as increasing loan rates overall.

In 1967, Congress again amended the AAA, *expressly permitting peanut farm owners and operators "to sell or lease all or any part of the right to all or any part of their peanut acreage allotment".* Pub. L. No. 90-211, § 358a, 81 Stat. 658.

In 1996, Congress enacted the Federal Agriculture Improvement and Reform Act of 1996 (the "1996 FAIR Act"), Pub. L. No. 104-127, § 155, 110 Stat. 888, 922-30. The 1996 FAIR Act utilized marketing assistance loans to provide the price support for peanut producers and largely continued the system created in 1967, including the right of quota holders to lease their acreage allotments. § 155(i)(6)(A) of the 1996 FAIR Act.

In addition to continuing to allow quota holders like the Members to lease those valuable properties to non-quota holders, § 155(i)(6)(D) of the 1996 FAIR Act specifically guaranteed that: "[a]ny farm poundage quota transferred under this paragraph shall not result in any reduction in the farm poundage quota for the transferring farm if the transferred quota is produced or considered produced on the receiving farm." In other words, the Members, as bona fide quota holders, could lease their quotas to other

farmers without risking any reduction in their quota allocation.

The Members relied upon and availed themselves of this statutory provision and entered into leases for their quotas with non-Members. Thus, from 1977 until 2002, the Members, as well as all other peanut farmers, were guaranteed by statute that they could either farm their land or lease it for farming and receive exactly the same price support. No peanut farmer was worse off because he or she chose to lease the peanut quota rather than grow peanuts on the farmer's own land.

In 2002, Congress enacted the Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, §§ 1301-1310, 116 Stat. 134, 166-83 (the "2002 Act"), which amended the 1996 FAIR Act and specifically repealed the marketing quota program contained in 7 U.S.C. §§ 1357-1359a. Despite the unbroken statutory promise from 1967 until 2002 that peanut farmers would not be disadvantaged with respect to quotas because they leased the quotas instead of growing the peanuts themselves, the 2002 Act cut off the property right of quota holders like the Members who had leased their land in reliance on unbroken statutory assurances that leases would not diminish their property right and transferred the property interest in a peanut subsidy to the former lessees. Thus, the Members and all other farmers who leased their peanut quota lost their property rights in their quotas solely because they availed themselves of the statutory protection and leased their quotas rather than farmed their own land. Congress provided an involuntary "buyout" for former quota holders, but at a

price which the Members alleged did not constitute fair market value for the quotas.

The effect of the 2002 Act upon the Members was the following: (1) Because they had previously leased their quotas to other peanut farmers, they lost their property right to a government subsidy. (2) The lessees to whom the Members leased their quotas obtained the property right to the subsidy that the Members previously enjoyed. Under the 2002 Act, the property right was framed as a right to price supports for eligible peanuts, but the economic effect and benefit to peanut farmers was the same as a quota: *i.e.*, the federal government guaranteed a minimum price for certain peanuts that was extremely valuable.[1]

The 2002 statute not only cut off price supports for the Members because they had leased their property and transferred the right to receive a subsidy to the former lessees of the property, but it also permitted the former lessees to contract with third parties to produce peanuts. In short, the former lessees were permitted to "lease" their right to the subsidy without losing their entitlement to the subsidy even though the former lessors were deprived of their quota rights for engaging in precisely the same arrangement. The direct effect of this law was a governmental taking of the quota rights from the owner of those rights and giving the rights to the owner's lessee.

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[1] The price supports involved direct payments and counter-cyclical payments. Together these payments guaranteed a minimum payment for eligible peanuts.

The 1996 FAIR Act was specific and clear in its guarantee that the Members could lease their quotas without penalty. The Act provided as follows:

> Any farm poundage quota transferred under this paragraph shall not result in any reduction in the farm poundage quota for the transferring farm if the transferred quota is produced or considered produced on the receiving farm.

1996 Act, § 155(i)(6)(D). *See also* 7 U.S.C.§ 1358a (c) and (f), discussed below. The 2002 Act turned the tables on the Members and punished them for entering into the leases which were protected by the 1996 Act.

Proceedings Below

The Members filed suit in the United States Court of Federal Claims alleging that the 2002 Act constituted a taking. That court granted summary judgment for the United States on the ground that the Members failed to establish a property interest in their peanut quotas protected by the Takings Clause of the Fifth Amendment. *Members of the Peanut Quota Holders Ass'n v. United States*, 60 Fed. Cl. 524 (2004). On August 25, 2005, a panel of the United States Court of Appeals for the Federal Circuit rejected the Claims Court decision with respect to the Members' property right and found that the Members did indeed possess a property interest in their peanut quotas.

The panel held, however, that because the government created the property interest the government was free to terminate it without paying compensation to the holders of the property interest.